qualifying words or express provision to the contrary, to mean a licence under the Enactment and issued in the territory to which the Enactment applies, viz. the Federated Malay States. A moment's reflection would show that any other construction would speedily lead to an absurd position as, e.g. if the Johore licence contained requirements, e.g. compulsory third party insurance, which were not necessary in the Federated Malay States themselves.

The trouble about section 44(i) seems to be that it is not comprehensive enough, i.e. that it does not enumerate all the classes of motor vehicles which may be found on a public thoroughfare. It enumerates two classes only, the two obvious classes, and overlooks the third or special class created by section 13.

On the above construction of section 44(i) the appellant's conviction was clearly illegal. I therefore requested him, in view of section 305 of the Criminal Procedure Code and of the ruling in *Philip Hoahlim* v. *Public Prosecutor,* [1935] F.M.S.L.R. 207; [1935] M.L.J. 25, to withdraw his appeal, which he did, to deal with the matter under the powers of revision conferred by section 325 of the Criminal Procedure Code.

Under those powers I quashed the conviction and sentence and ordered the fine, which had been paid, to be refunded.

The sentences on the other charges appealed against were confirmed.

CHETTINAD BANK, LTD. v. CHAH BINTI HAJI MOHAMED AMIN

[A.C.J. (Howes J.) June 19, 1936]
[Perak Civil Application No. 8 of 1936]

Land Code (Cap. 138) — Charge containing no agreement to pay interest after due date — Reduction of principal by amount of interest paid after due date.

The respondent borrowed $3,000 from the applicants and on the 30th May, 1932, executed a charge in their favour by which she undertook to repay that sum on the 30th May, 1933, and in the meantime to pay interest at 12 per cent. per annum by equal monthly instalments of $30. The charge contained no agreement to pay interest after the 30th May, 1933, but in fact the respondent paid $960 after that date by way of interest and this sum was appropriated by the applicants towards interest.

At the application by the applicants for sale under the charge, the Collector decided that this $960 should be treated as repayment towards principal and accordingly made an order for sale to recover $3,000 less $960, i.e. $2,040 and costs.

Held: on appeal, that the respondent had voluntarily, under a mistake of law, continued to pay interest after the 30th May, 1933. Therefore the applicants were entitled to appropriate the payments so made towards interest and the Collector was wrong in treating such payments as a reduction of the principal sum.

S. Seenivasagam for the applicants.

Respondent absent.

Cur. Adv. Vult.

[260] **Howes J.:** This is an application under section 237(iii) of the Land Code (Cap. 138) against the decision of the Collector of Land Revenue, Lower Perak, by which he ordered the sale of certain lands subject to a charge for the recovery of $2,040 and costs. The respondent-chargor has not appeared, so presumably does not oppose the application.

The facts are as follows:—

The chargor borrowed $3,000 from the chargees, and on 30th May, 1932, executed a statutory charge in their favour by which she undertook to repay the sum of $3,000 on 30th May, 1933, and in the meantime to pay interest at 12 per cent. per annum by equal monthly payments of $30. The chargor made default in repaying the principal on 30th May, 1933, but continued to pay interest until 29th January, 1936. The amount paid as interest up to that date was $1,320.

These payments were made by the chargor voluntarily, as interest, at the rate mentioned in the charge, and were appropriated by the chargees-applicants towards interest.

On the 28th February, 1936, the applicants applied to the Collector of Land Revenue for an order for sale under the provisions of the Land Code.

The charge contained no agreement to pay interest after the date fixed for repayment of the principal, viz., 30th May, 1933.

The Collector, in view of the decision of the Court of Appeal in *Arumugam* v. *Leonard,* [1936] F.M.S. L.R. 1; [1936] M.L.J. 252 (*supra,* 201) (which decided that in the absence of a stipulation in a charge to the contrary, interest thereunder ceased on the day on which the principal was repayable) was of opinion that the sum of $960 paid by the chargor as interest after the date for repayment of the principal, viz., 30th May, 1933, should be treated as repayment of the principal and should not be regarded as a payment of interest. Consequently, he reduced the amount of the principal sum (in respect of which the sale of the lands was ordered) to $3,000 less $960, i.e. $2,040 and costs.

The Collector had been informed of the result of the decision of the Court of Appeal by S.C. Circular No. 1 in R.S.C. 16/36 dated 15th January, 1936, but had not had the advantage of reading the judgment of that Court. He was evidently of opinion that that decision justified him in reducing the principal sum by the amounts paid as interest after the 30th May, 1933.

Whilst, following the above decision, the obligation to pay interest ceased on 30th May, 1933, since the chargor, (possibly under a mistake of law) voluntarily continued to pay interest, these payments were in fact payments of interest, and not repayment of the principal sum. Credit has been given by the chargees in their accounts for these sums as interest, and any subsequent claim for interest would necessarily be reduced by these amounts. Money paid under a mistake of law cannot be recovered by the payer, and the chargees were entitled to appropriate the sums paid towards the reduction of their claim to interest.

For this reason, I hold that the Collector was wrong in reducing the principal sum by the amounts paid as interest after the date fixed for repayment of the principal. That sum remains unchanged and is

still owing. Consequently, the Collector's order for sale must be varied by deleting the words "less $960" and will therefore be, "Order for the sale of the lands for the recovery of $3,000 and costs."

With regard to the costs of this application, it appears that the chargor was in no way to blame. Mr. Seenivasagam does not press for costs and I accordingly make no order as to costs.

Application allowed.

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[261] STRAITS SETTLEMENTS REPORTS

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DORAI MANICKAM alias DAVIS v. REX

[A. Cr. J. (Whitley Ag. C.J., Adrian Clark J. and Cobbett Ag. J.) August 31, 1936]

[Singapore D. C. Criminal Appeal No. 29 of 1936]

Criminal Procedure — Misjoinder of charges — Acquittal of accused — Subsequent trial on same charge — Autrefois acquit — Criminal Procedure Code, ss.287, 312A.

Owing to a misjoinder of charges, the prosecution did not proceed with one charge in respect of which the District Court made an order of acquittal. At a later stage in the proceedings the remaining charges also were not proceeded with and, in respect of them, an order of discharge was made. In a subsequent trial on the charge on which the accused was recorded to have been acquitted, the defence raised a plea of previous acquittal and the District Judge rejected the plea.

Held: on appeal, that the misjoinder of charges in the previous trial did not render the whole proceedings void *ab initio* and a nullity.

Held further: that the plea of *autrefois acquit* was in all the circumstances of the case well founded.

Held also: that the where a party to criminal proceedings who has had the opportunity to appeal under section 293 or 295 of the Criminal Procedure Code neglects, without very good reasons, so to do, he will not be allowed to call in aid the High Court's revisionary powers under section 312A of the Code; and that where it is proper that application be made to the Court to exercise its powers under the last mentioned section the application should be made at the first possible moment.

APPEAL from an order of the Criminal District Judge dated the 26th day of May, 1936. The appeal was heard before a Court of three Judges consisting of Whitley Ag. C.J., Adrian Clark J., Cobbett Ag. J. on June 22, 24 and 26, 1936, when at the conclusion of the hearing of appeal the President of the Court delivered an oral judgment allowing the appeal. The Court intimated that in view of the importance of the points raised, they would record their reasons in writing later.

The facts and arguments appear sufficiently from the grounds of judgment below.

Tampoe-Phillips for the appellant.

Worley (Solicitor-General) for the Crown (respondent).

On the 31st day of August, 1936, the following grounds of judgment were read by —

Adrian Clark J.: In this case the appellant was brought before the District Court in July of 1935 on a charge sheet containing two charges.

The case was conducted on behalf of the Crown by a firm of solicitors who were feed by the complainants but authorised under section 384 of the Criminal Procedure Code to act for the Public Prosecutor.

The accused was remanded for trial and, on the day on which the trial commenced, a third charge was added to the charge sheet. This third charge cannot be traced on the records of the District Court and the usher of the Court has stated on oath that he returned it to the solicitors for the prosecution. This seems to show some practice, or lack of it, in the District Court which should immediately be remedied. It is essential that in all criminal trials, in whatever Court they take place, charges should be formally drawn up, recorded and preserved.

This third charge seems, from what appears in the notes of evidence, to have been one charging criminal breach of trust of a sum which was the aggregate of many sums (presumably not including that in the first charge) alleged to have been misappropriated during one year, details being given of the individual misappropriations making up the aggregate. Whether such a charge really complies with the provisions of section 159(2) of the Criminal Procedure Code may be open to doubt but the point is not before us.

For the purposes of this appeal it is agreed that this third charge, and its addition to the first two, can have no bearing on the points at issue.

After several hearings and the recording of a mass of evidence from a large number of witnesses the Crown closed its case. The advocate for the defence then took the objection (*inter alia*) that the "whole of the prosecution was bad for misjoinder" because the second charge in the charge sheet alleged the commission of an offence of criminal breach of trust on the 5th January, 1934, while the first charge alleged the commission of an offence of the same kind on the 13th March, 1935. There was therefore between these dates a period of time greater than the space of twelve months permitted under section 170(1) of the Criminal Procedure Code.

The advocate at that time appearing for the Crown resisted all the submissions of the advocate for the defence and, in the result, the learned District Judge ruled that "the charges are legal and there is a case to meet on all three charges."

The accused then gave evidence on oath throughout the remainder of that day and during part of another day's hearing.

[262] While his evidence was still progressing, [262] however, the advocate for the Crown, according to the note of the learned District Judge, "interposed to say that the Deputy Public Prosecutor.....considers charge II contravenes section 170(1), Criminal Procedure Code and that he will not further prosecute on that charge."

In other words the Deputy Public Prosecutor purported to act under section 182 of the Criminal Procedure Code under which section the Court is thereupon empowered either merely to discharge or else to acquit as well as to discharge the accused.

In this case the accused was acquitted of the second charge and the trial then proceeded upon the first and third.